Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-6151

****

WILLIE EDWARD McZORN,

Petitioner

v.

STATE OF NORTH CAROLINA,

Respondent.

****

RESPONSE OF THE STATE OF NORTH CAROLINA

TO

PETITION FOR WRIT OF CERTIORARI

TO THE

SUPREME COURT OF NORTH CAROLINA

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II. Were petitioner's constitutional rights to procedural due process observed by the State of North Carolina?

a. Do the Fifth and Fourteenth Amendments to the Constitution of the United States require that a police officer be absolutely certain that a suspect is armed before he conducts a protective search for concealed weapons where that police officer has received information from a reliable informant that the individual searched has on his person a revolver used in a killing?

b. Were the constitutional rights exemplified in Miranda v. Arizona, 384 U. S. 436 (1966), observed by North Carolina in admitting into evidence extrajudicial statements made by a defendant some twenty to thirty minutes after he had refused to answer further questions upon being advised and stating that he understood his rights?

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RESPONSE OF RESPONDENT,

STATE OF NORTH CAROLINA,

IN OPPOSITION TO

PETITION FOR WRIT OF CERTIORARI

CITATION TO OPINION BELOW

The opinion of the Supreme Court of North Carolina is reported at 288 N. C. 417, 219 S. E. 2d 201 (1975) and is appended to Petitioner's Petition as Appendix A.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 USC §1257(3).

QUESTIONS PRESENTED

I. IS CAPITAL PUNISHMENT, IPSO FACTO, CRUEL AND UNUSUAL PUNISHMENT WITHIN THE MEANING OF THE EIGHTH AMENDMENT?

II. WERE PETITIONER'S CONSTITUTIONAL RIGHTS TO PROCEDURAL DUE PROCESS OBSERVED BY THE STATE OF NORTH CAROLINA?

a. DO THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES REQUIRE THAT A POLICE OFFICER BE ABSOLUTELY CERTAIN THAT A SUSPECT IS ARMED BEFORE HE CONDUCTS A PROTECTIVE SEARCH FOR CONCEALED WEAPONS WHERE THAT POLICE OFFICER HAS RECEIVED INFORMATION FROM A RELIABLE INFORMANT THAT THE INDIVIDUAL SEARCHED HAS ON HIS PERSON A REVOLVER USED IN A KILLING?

b. WERE THE CONSTITUTIONAL RIGHTS EXEMPLIFIED IN MIRANDA V. ARIZONA, 384 U. S. 436 (1966), OBSERVED BY NORTH CAROLINA IN ADMITTING INTO EVIDENCE EXTRAJUDICIAL STATEMENTS MADE BY A DEFENDANT SOME TWENTY TO THIRTY MINUTES AFTER HE HAD REFUSED TO ANSWER FURTHER QUESTIONS UPON BEING ADVISED AND STATING THAT HE UNDERSTOOD HIS RIGHTS?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. This case involves the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States.

II. In addition to the statutes cited by the petitioner in his Petition for Writ of Certiorari the following provision is applicable in this case:

N.C.G.S. §7A-457(c):

> "An indigent person who has been informed of his right to be represented by counsel at any out-of-court proceeding, may, either orally or in writing, waive the right to out-of-court representation by counsel."

STATEMENT OF CASE

Petitioner, Willie Edward McZorn, was tried and convicted of first degree murder and armed robbery at the March 3, 1975, session of Moore County Superior Court, in Moore County, North Carolina. Petitioner appealed his convictions to the North Carolina Supreme Court, which, in its Opinion filed November 5, 1975, arrested judgment as to petitioner's conviction for armed robbery and affirmed petitioner's conviction of first degree murder with sentence of death. Petitioner now seeks review in this Court upon Petition for Writ of Certiorari to review the judgment of the Supreme Court of North Carolina.

STATEMENT OF FACTS

The State-respondent adopts as its own as if fully set out herein the facts as stated by the North Carolina Supreme Court at pages 202-207 of its Opinion in State v. McZorn, supra, a copy of which is appended to petitioner's Petition as Appendix A.

ARGUMENT

I. THE COURT SHOULD NOT GRANT CERTIORARI TO CONSIDER WHETHER THE IMPOSITION AND CARRYING OUT OF THE SENTENCE OF DEATH FOR THE CRIME OF FIRST DEGREE MURDER UNDER THE LAW OF NORTH CAROLINA VIOLATES THE EIGHTH OR FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

There is no valid reason for the Court to grant certiorari to presently hear this question. This Court in the case of James Tyrone Woodson and Luby Waxton v. State of North Carolina, No. 75-5491 (October term, 1975) granted certiorari to petitioners James Tyrone Woodson and Luby Waxton to hear this identical question. Briefs are scheduled to be filed in that case and oral arguments will be made before the Court. As petitioner in this case has presented no new rationale concerning this issue, incorporating instead by reference the questions raised and the reasons advanced for granting a writ of certiorari in that case, it is apparent that the outcome in his case must be dependent upon the outcome of the Woodson and Waxton case as well as on other similar cases already before the Court. The petition to grant certiorari in this case should therefore be denied.

II. WERE THE PETITIONER'S CONSTITUTIONAL RIGHTS TO PROCEDURAL DUE PROCESS OBSERVED BY NORTH CAROLINA AT ALL STAGES OF THE PROCEEDINGS?

A. The Court should not grant certiorari to consider the question of whether or not a police officer must be absolutely certain that a suspect is armed before he conducts a protective search for concealed weapons if that police officer has received information from a reliable informant that the person to be searched has on his person the revolver used in a killing.

Petitioner claims that the stopping of his vehicle at the time of his initial apprehension constituted a violation of his procedural due process rights and that the gun seized when he was frisked at this time should not have been admitted into evidence against him.

The North Carolina Supreme Court held that the "informant's tip carried sufficient 'indicia of respectability' to justify the officer's stop of defendant's car." At page 210. In arriving at this conclusion, the North Carolina Supreme Court traced historically the development of the "stop and frisk" doctrine beginning with the case of Terry v. Ohio, 392 U. S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1967), through the case of Adams v. Williams, 407 U. S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972) wherein the United States Supreme Court stated:

> "Thus while the Court's decisions indicate that this informant's unverified tip may have been insufficient for a narcotics arrest or search warrant...the information carried enough indicia of reliability to justify the officer's forcible stop of Williams.
>
> In reaching this conclusion we reject respondent's argument that reasonable cause for stop and frisk can only be based on the officer's personal observation, rather than on information supplied by another person."

By way of further argument, the State respondent adopts as its own as if fully set out herein the rationale as stated by the North Carolina Supreme Court at pages 207-211 of its opinion in State v. McZorn, supra, a copy of which is appended to Petitioner's Petition as Appendix A.

B. The Court should not grant certiorari to consider whether Miranda warnings, properly given to a prisoner in custody who declines to make any statement, must be repeated fifteen or twenty minutes later when the same prisoner is again

questioned, resulting in his confession.

The North Carolina Supreme Court fully discusses this question at pages 212-213 of its opinion in State v. McZorn, supra, a copy of which is appended to Petitioner's Petition as Appendix A. The North Carolina Supreme Court's position can be summarized by the following quotation from page 212:

> "However the need for a second warning is to be determined by the 'totality of the circumstances' in each case... 'The ultimate question is: Did the defendant, with full knowledge of his legal rights, knowingly and intentionally relinquish them?'"

The Court then relates the circumstances involved in the Defendant-Petitioner's interrogation to this rule, and concludes that "the statement which defendant volunteered was freely and understandingly made." At page 213. The State-Respondent hereby incorporates by reference the other cases cited and reasons advanced by the North Carolina Supreme Court in affirming Defendant-Petitioner's conviction for first degree murder in State v. McZorn, supra, at pages 211-213, a copy of which is appended to Petitioner's Petition as Appendix A.

CONCLUSION

Based on the aforementioned reasons, the State-Respondent respectfully submits that certiorari be denied.

Respectfully submitted this the 1 day of March, 1976.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing RESPONSE OF RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on petitioner by depositing the same in the United States Mail addressed to the following person:

Mr. William D. Sabiston, Jr.
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This the 1 day of March, 1976.

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